IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 24090 of 2006(P)

PETITIONER:

V.R.BHASKARAN, RESIDING AT
ELAMPARA P.O., KANNUR DISTRICT, (MANAGER,
THERUR U.P.SCHOOL, POST EDAYANNUR).

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

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1. THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT OF
KERALA, THIRUVANANTHAPURAM.

2. THE JOINT SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
TRIVANDRUM.

4. THE ASSISTANT EDUCATIONAL OFFICER,
MATTANNOOR.

5. AMERI PADMANABHAN, S/O.KANNAN,
KEEZHALLUR AMSOM, EDAYANNUR DESOM,
POST EDAYANNUR

BY ADV. SRI.POOVAMULLE PARAMBIL ABDULKAREEM (FOR R5)
GOVT. PLEADER, SRI.K.J.VARGHESE (FOR R1 TO R4)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON 05/06/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE ELECTION PROCEEDINGS OF THE THERUR U.P.SCHOOL.

EXT. P1(A): COPY OF THE REGISTRATION OF THE ELECTION AT DISTRICT REGISTRAR'S OFFICE AT THALASSERY.

EXT. P2: COPY OF THE ELECTION PROCEEDINGS RELIED ON BY R5.

EXT. P3: COPY OF THE MEMORANDUM OF ASSOCIATION OF THE SOCIETY IN THE AMENDED FORM.

EXT. P4: COPY OF THE COMMON JUDGMENT DTD.29.9.2001 OF THE MUNSIFF'S COURT, KOOTHUPARAMBA.

EXT. P5: COPY OF THE JUDGMENT IN AS 130 OF 2001 ON THE FILE OF THE SUB JUDGE'S COURT, THALASSERY.

EXT. P6: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN S.A. NO.

EXT.P7: COPY OF THE ORDER OF A .E.O. MATTANNUR DTD. 29.5.2004.

EXT. P8: COPY OF THE ORDER OF THE D P I DTD.27.9.2005.

EXT. P9: COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER BEFORE R1 DTD. 26.12.2005.

EXT. P10: COPY OF THE ORDER PASSED BY R1 DTD. 27.12.2005.

EXT. P11: COPY OF THE ORDER PASSED BY R2 DTD 29.8.2006.

RESPONDENT'S EXHIBITS:

EXT. R5(A): COPY OF THE RULES AND REGULATIONS OF THE SOCIETY.

EXT. R5(B): COPY OF THE PROCEEDINGS OF RETURNING OFFICER ALONGWITH NAMES OF THE GOVERNING BODY MEMBERS ELECTED IN THE ELECTION HELD ON 8/1/2001.

EXT. R5(C): COPY OF THE PROCEEDINGS OF RETURNING OFFICER ALONGWITH NAMES OF THE GOVERNING BODY MEMBERS ELECTED IN THE ELECTION HELD ON 27/9/2004.

EXT. R5(D): COPY OF THE DEPOSITION OF THE PETITIONER IN OS NO.37/98.

EXT. R5(E): COPY OF THE DECREES IN OS NO.37/98 DATED 29/9/2001.

EXT. R5(F): COPY OF THE DECREES IN OS NO.45/98 DATED 29/9/2001.

EXT. R5(G): COPY OF THE LETTER DATED 7/5/2004.

EXT. R5(H): COPY OF THE ORDER DATED 24/5/2004.

EXT. R5(I): COPY OF THE CROSS OBJECTION FILED BY THE PETITIONER IN AS NO.130/2001.

EXT. R5(J): COPY OF THE DECREE IN OS NO. 396/2001.

EXT. R5(K): COPY OF THE JUDGMENT DATED 30/3/2005 OF THIS HONOURABLE COURT IN WPC NO.19337/2004.

/TRUE COPY/

P.A. TO JUDGE

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K. M. JOSEPH, J.

W.P.C. NO. 24090 OF 2006 P

Dated this the 5th June, 2007

JUDGMENT

Petitioner challenges Exts.P8 and P11, and seeks a writ of mandamus forbearing the fourth respondent from granting approval as Manager to the fifth respondent. Case of the petitioner, in brief, is as follows:

Therur Educational Society (hereinafter referred to as the Society) is a Society registered under the Societies Registration Act. Therur U.P. School (hereinafter referred to as the School)is managed by the Society. The question which is to be decided relates to the management of the School. Petitioner was elected as Secretary of the Governing Body on 8.5.2004. Fifth respondent's claim is that he is elected as Secretary by the Governing Body on 8.10.2001. The proceedings of the Governing Body in which the petitioner was elected, was produced before the AEO and he came to be approved as Manager on 29.5.2004. Ext.P1 is produced as the election

proceedings. Ext.P1(a) is produced to show that election was intimated and it was registered at the District Registrar's Office. Ext.P2 is the election proceedings relied on by fifth respondent. The byelaw was amended on 15.1.1989. An election took place to the Governing Body on 12.1.1992. It was for a period of three years. Before expiry of the said period, fifth respondent instituted OS No.26/95. The prayer was to prohibit the Governing Body from continuing in the office of the Society after 11.1.1995. There is reference to other Suits as OS Nos.547/97, 8/98 and 45/98. The Judgment in OS No.26/95 has become final. Ext.P4 is the common Judgment of Munsiff's Court. The Court found that the number of Members are not 28 as contended by the fifth respondent, but the number of Members of the Society is sixty. The election dated 4.1.1998 was held to be invalid as the fifth respondent and his men used force. The prayer in OS No.37/98 was not granted, as the period of the election was already over. Defendants including the fifth respondent instituted AS No.130/01 against the Judgment in OS

No.37/98. Ext.P5 is the appellate Judgment. By Ext.P6, the High Court dismissed the Second Appeal. Petitioner was approved as Manager by the AEO vide Ext.P7. By Ext.P8, in revision, the DPI set aside the order. Petitioner preferred Ext.P9 revision which was disposed of by Ext.P11. Petitioner challenges Exts.P8 and P11. It is stated that the impugned orders are without jurisdiction. There is no authority with the said Authorities to interfere with the civil court's order which has affirmed the election declaring the petitioner as Secretary, it is stated. It is contended that as long as the election stands and the civil court Judgment governs it, neither the Director of Public Instruction, nor the Secretary to Government has any powers to declare that there was no valid election, and they have only power to determine who should be the Manager of the School under the Act and the Rules. Exception is taken to the finding that the holding of the election is improper. The findings could not have been entered as it has become final by the Judgment of the Subordinate Court, it is stated. It is stated

that the question as to whether there were sixty members or not, is to be decided in OS No.78/02 and instead of awaiting its decision, the DPI has over-stepped his limits and allowed the appeal of the fifth respondent. It is stated that the Joint Secretary has no authority. It is contended that the Government has practically sat in Judgment over the findings entered by the competent civil courts. There is no challenge to the election at all and the challenge was only regarding the membership which has been decided by the competent court, it is stated.

2. In the Counter Affidavit filed by the fifth respondent, it is, inter alia, stated as follows:

Ext.R5(a) is the Rules and Regulations of the Society. It, inter alia, provides that the term of the Governing Body is for three years. It is stated that the petitioner is not even a member of the Governing Body since 1998. It is stated further that the fifth respondent was elected as Secretary by the Governing Body on 8.10.2001 and thereafter on 27.9.2004 also. Exts.R5(b) and R5(c) are produced as copies of proceedings of the

Returning Officer of the elections held on 8.10.2001 and 27.9.2004. Exts.P1 and P1(a) are stated to be only creations of the petitioner to stake a claim as Manager of the School. The letterhead of Exts.P1 and P2 are divergent, it is stated. It is incorrect to say that the Byelaw was subsequently amended by the decision of the General Body dated 15.1.1989. It is stated that no amendment has taken place in the past forty years for increasing the number of members in the General Body. Ext.R5 (d) is a true copy of the deposition of the petitioner in OS No.37/98 which is produced to show that the petitioner has admitted in his cross-examination that he has not raised the contention that an amendment had taken place in 1989 prior to the Suit anywhere so far. It is stated that the issue is not with regard to the election held on 8.1.1995. After Ext.P4 Judgment, a valid election was conducted or not, is the question. Ext.R5(g) is the letter dated 7.5.2004 forwarded by the fifth respondent to fourth respondent in the light of Ext.P5 Judgment. By Ext.R5 (h), the claim stood rejected. Ext.R5(i) is the Cross Objection of

the petitioner in AS No.130/01. Petitioner and his supporters filed OS No.396/01. Ext.R5(j) evidences dismissal of OS No.396/01. It is stated that in the light of the Judgment in AS No.130/01 and the concurrent finding of the DPI and the second respondent, the fifth respondent is eligible for appointment as Manager with effect from 30.9.2003.

3. Petitioner has filed a Reply Affidavit. It is, inter alia, stated as follows:

The election has become final. There is no challenge before any Forum. The Educational Authorities have no right to ignore the election which determines the right of management of the School. It is stated that the validity of the election cannot be challenged in these proceedings also as a civil suit is the remedy and there is no such Suit. It is his further case that the issue as to how many members are entitled to vote, is pending consideration before the trial court in OS No.78/02.

4. In **Kuruvilla** v. **District Educational Officer & Others** (1970 KLT S.N. Page 37), it was held as follows:

> *"The Rules confer power on the Educational Officer only to grant approval to the appointment of or change in personnel of the Manager. Disputes regarding the election of the Managing Board appear to be totally outside the purview of the limited function to be exercised by the District Educational Officer in dealing with an application for approval made to him by the Educational Agency under Rules 4 and 5. Such disputes can be satisfactorily resolved only by a detailed adjudication before the ordinary Civil Courts."*

In **Mar Aprem Metropolitan v. D.E.O**. (1975 K.L.T. SN 34, Case No.81) a learned Single Judge of this court took the following view:

> "The Rules confer power on the Educational Officer only to grant approval to the appointment of or change in the personnel of Manager. If there is any serious dispute a to who is the Educational Agency as

such or who represents the Educational Agency, the Educational Officers are not competent to decide those questions. The Rule making authority has rightly not invested the Educational Officers with the jurisdiction to decide those questions which may involve taking of evidence and considerations of complicated legal questions. The provision in Rule 2 of Chapter III that the constitution of the Educational Agency to the extent and in so far as it relates to the schools must be subject to rules approved by Director and the fact that such constitution has in this case been approved by the Director after dispute as to who represents the Educational Agency has arisen will not invest the District Educational officer with power to decide the question who is the real Metropolitan of the Chaldean Church who alone could represent the Educational Agency concerned."

But the said judgment came to be reversed in W.A. Nos. 249 and 327 of 1975 as noticed in W.A. 152 and 191 of 1978. In **Abdul Rahim v. State of Kerala** (1984 K.L.T. 773) a Division Bench of this court took the following view:

"We understand the Division Bench ruling as one laying down that it is for the statutory authorities

constituted under the Kerala Education Act and the Rules framed thereunder, to the best of their resources and ability, to decide the question of the right of management of the School. We do not, however, understand it as one laying down a proposition that such decisions taken by the Educational Authorities would conclude the civil rights of the parties to the properties involved. The decisions of the Educational Authorities are not meant to settle civil rights of the parties to such properties. These decisions are in the nature of summary determination for the sake of expediency, without waiting for the result of a protracted litigation in a civil court. There could be no doubt that the right to agitate on questions of civil rights in a civil court would remain unaffected in spite of the decision by the Educational Authorities for the limited purpose of carrying on the functions an fulfilling the obligations under the Act. It does not, and cannot oust the jurisdiction of the civil court in matters touching the civil rights of the parties."

Referring to the same in **Iysha Narayanan v. State of Kerala** (I.L.R. 1985 Kerala 348) the Court held as follows:

"When the right to the ownership of a school is

> seriously in dispute, a proper decision thereon can be rendered only by examining a large volume of evidence, oral and documentary, which the parties will be interested in adducing. The Educational Officers and the Secretary to Government would be unequal to the task of adjudicating such a dispute. Exts.P7 and P12 are illustrative of the accidents involved in entrusting the final decision to them. Of course, if the statute provides that they, and they alone, could decide the matter, that policy will have to be given effect to. But as we said, the statute in this case does not confer any such exclusive jurisdiction on them, except for the purposes of administering the Act. The civil courts' power remains untouched."

On the basis of the same, the Division Bench upheld the order of the Government, which had taken the view that the School had vested in the Committee and not in Sri. Narayanan or his heirs. In the decision reported in **Dr. Philippose Mar Theophilus v. State of Kerala** (1986 K.L.J. 1069) a learned Single Judge was considering the scope and power of the Director of Public Instruction in granting previous permission for effecting a change of management involving a change of ownership. The

question arose in the context of the dispute between two factions of the Orthodox (Jacobite) Syrian Christian Community, a dispute of considerable age. Therein the learned Single Judge referred to the earlier case law and subsequent views and proceeded to hold as follows:

> "In Kuruvilla v. D.E.O. And others (1970 KLT SN.37) Eradi.J. (as he then was) had indicated that the powers of the educational authorities in the matter of approving change of management under Rule 3 to 5 of Chapter III KER were of a limited nature and that disputes regarding election of Managing Board etc. were to be resolved through adjudication before the ordinary civil courts. And in Mar Aprem Metropolitan v. D.E.O. And another (1975 KLT SN 34) Chandrasekhara Menon, J., had said :-
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> "If there is any serious dispute as to who is the Educational Agency as such or who represents the Educational Agency, the Educational Officers are not competent to decide those questions. The Rule making authority has rightly not invested the Educational Officers with the jurisdiction to decide those questions which may involve taking of evidence and considerations of complicated legal questions.

The provision in Rule 2 of Chapter III that the constitution of the Educational Agency to the extent an in so far as it relates to the Schools must be subject to rules approved by the Director after dispute as to who represents the Educational Agency has arisen will not invest the District Educational Officer with power to decide the question who is the real Metropolitan of the Chaldean Church who alone could represent the Educational Agency concerned."

True that the above two decisions were not directly dealing with the scope of Rule 5A, but they wee attempting generally to delimit the scope of the Educational Authorities' power in the matter of granting approvals and permissions under the Rules in Chapter III. There were, however, observations by a Division Bench of this Court in some subsequent decisions that the Educational Authorities could not decline to exercise their duties under the statute in every case by directing the parties to first approach civil courts; and the matter was again considered by another Division Bench, in Sathyanesan v. State of Kerala (1984 K.L.T. 773) where Bhaskaran. CJ., said that though it was open to the Educational authorities to decide such questions "to the best of their resources

and ability", the final decision in disputes relating to ownership etc. had to come from the civil courts; the decision of the statutory authorities on civil rights could only be subject to the decisions of the ordinary courts of the land. This view was repeated in Iysha Narayanan v. State of Kerala ILR (1985) 1 Kerala 348, a case where the court had specifically found that the statutory authorities had proved themselves unequal to the task they had been called upon to perform. Said the Court:

"When the right to the ownership of a school is seriously in dispute, a proper decision thereon can be rendered by by examining large volume of evidence, oral and documentary, which the parties will be interested in adducing. The Educational Officers and the Secretary to Government would be unequal to the task of adjudicating such a dispute. Ext.P7 and P12 are illustrative of the accidents involved in entrusting the final decision to them. Of course, if the statute provides that they, and they alone, could decide the matter, that policy will have to be given effect to. But as we said, the statute in this case does not confer any such exclusive jurisdiction on them, except for the purposes of administering the Act. The civil courts'

power remains untouched."

The case law thus suggests that abdication of jurisdiction (under Rule 5A) by the statutory authorities in every case, on the ground that the dispute is a fit one for the civil court, cannot be justified; it also suggests that there would be cases where the disputes involve complicated questions of fact and law beyond their reach. In each case arising under Rule 5A, therefore, the D.P.I. (or Government) will have to decide whether a case of change of ownership is involved, so as to justify grant of approval for a consequent change of management. If possible they should decide the question in all cases, at least for the limited purposes of the Act and Rules. But where the problems are far too complex, requiring the taking of evidence and the determination of difficult legal questions, they can certainly hold their hands and await appropriate decisions from civil courts, if they are satisfied that there would be no vacuum in the management of the school in the meanwhile. After all, what is important is that there should be some one to function as Manager under the control of the Educational authorities; and that that some

> one should be one chosen by a person who is prima facie at least, the owner of the institution. The question of real ownership and a final determination of the same, in so far as they amount to recognition of civil rights are obviously out of bounds for the D.P.I. And the Government."

On the basis of the discussion the learned Judge came to interfere with the order of the Government. The learned Single Judge took the view that Government committed a grave error in attempting to give effect to the will of the year 1948 without examining the relevant questions. Learned Judge also found that the answers to many of the questions involved complicated questions of fact and law, which dissuaded the DPI in taking a decision. The court took note of the fact that DPI was unable to make up its mind in the matter. Further more, it was noted by the DPI that there is no vacuum in the management of the School and the arrangement the Department had consistently approved and given effect to for some time more. Leaving the party respondent free to establish his right through the original courts of the land and then move the Director of Public

Instruction, the order of the Government came to be set aside. This judgment was affirmed in W.A. 746 of 1986. No doubt the Division Bench proceeded to make it clear that the observations made by the learned Single Judge should not be regarded as having any bearing on the merits of the contentions of the parties.

5. In the facts of this case it is in the context of this case law, I must appreciate the contention of the petitioner that there is no basis for the authority to interfere with the civil courts' order which had affirmed the election declaring the petitioner as Secretary. Sri. K.Ramkumar, learned counsel appearing for the petitioner would contend that as far as the election, in which the petitioner was elected as Secretary is concerned, there is no challenge to the same. If at all, the matter could be said to be pending in the civil courts', it was in the form O.S. 78 of 2002, which is yet to be decided, he points out. If that is so, he would contend that on the strength of Exts.P1 and P2 once the election was held and notified to the concerned authority, it was quite

illegal on the part of the authorities to interfere with the order of the Educational officer, who had approved the petitioner as Manager by purporting to go into the validity of the election. According to the respondents, in fact the election had taken place in 2001, in which the fifth respondent was elected as the Secretary. The tenure of office is three years. Going by the date of the election in the year 2001, it is submitted that the contention of the petitioner that the election took place in 2004 as contended by him is highly improbable and unbelievable. It is also legally unacceptable, it is contended. He would refer to the rules to contend that there was no authority to convene such an election as contended by the petitioner. Sri. K.Ramkumar would contend that in this case we are concerned with the validity of the impugned orders and the validity of the election of the petitioner in the year 2004.

6. Apparently an election had taken place in the year 1992. It is true that O.S.26 of 1995 came to be instituted by the fifth respondent. There were three other suits. They came to be tried

jointly. The Munsiff delivered a common judgment, which is produced as Ext.P4. The Munsiff found inter alia that there were 60 members in the Society. The Munsiff also found that the declaration of the election by the Returning Officer in favour of the fifth respondent could not be acted upon. He ordered election under the supervision of the Educational Officer. One of the suits was O.S.37 of 1998. That suit came to be closed as infructuous. An appeal as A.S.130 of 2001 was carried before the Sub Court culminating in Ext.P5 judgment. By Ext.P5 judgment the appellate court came to vacate the finding of the Munsiff Court that there were 60 members. Of course the sub Court made it very clear that it is not pronouncing on whether there were only 28 members. The Sub court also interfered with the direction to hold election under the supervision of the Educational Officer. According to the fifth respondent there took place an election in 2001, of course without the supervision of the Educational Officer as mandated in the judgment of the learned Munsiff. Apparently further the fifth respondent is

purporting to justify the said course on the basis of Ext.P5 judgment subsequently delivered by the Sub Court.

7. The impugned order of the DPI as affirmed by the Government falls into two parts. The appeal of the fifth respondent was allowed and the approval granted to the petitioner as Manager by the Educational Officer was set aside. Further the DPI directed approval to be granted to the fifth respondent as Manager from September 30th, 2003, which is the date on which Ext.P5 judgment was delivered by the Sub court. In arriving at the said conclusion the DPI has proceeded to consider the question as to whether the claim of the petitioner that the election took place in which 60 members participated is acceptable. Thereafter after referring to the history of the amendment to the bye-laws, the Director of Public Instruction came to the conclusion that there was no enlargement of body of members as claimed by the petitioner so as to justify the claim of a valid election with 60 members. It was on this reasoning the DPI has proceeded to disapprove the managership of the

petitioner on the strength of the election as claimed by him.

8. It is to be noted that according to the impugned order the election took place in the year 2001 in which, the fourth respondent was elected as Secretary. There is no specific challenge to the election held in 2001 as such. The case of the petitioner itself is based on the election, which is stated to have taken place in the year 2004. There is no case that he was entitled to act as Manager prior to that. It is to be noted that the Civil Court, both the Munsiff and the Sub Judge were not concerned with the election which took place in the year 2004. The ground taken in the writ petition appears to be that the authorities cannot go against the findings entered in Exts.P4 and P5 judgments. As noticed the authorities in this case by the impugned orders were not dealing with the election which was subject matter of the civil suit. Of course the contention of the learned counsel for the petitioner would appear to be that the election in question has not been questioned before the Civil Court and it should be treated as invulnerable before the

authorities and it is not open to the authorities to go into the question as to the validity of the election. I would think that in the state of the law, which I have referred to earlier, it may not be possible for the petitioner to contend that the authorities are not to take a decision in the matter to the best of their capacity for the purpose of deciding on the question as to who is to be the Manager. This inevitable decision making process is particularly imperative in order to avoid any vacuum. No doubt, any decision taken by the authorities cannot be final as regards civil rights of the parties. In this case of course the question as to the number of persons entitled to vote is a matter pending consideration before the civil court in O.S. 78 of 2002. Apparently the case of the petitioner is built on the number of voters being 60. Two findings in that regard has been made by the authorities. The DPI has found that there was no amendment relatable to the question of increase in membership. But he also enters a finding that there is no evidence produced by the petitioner to show that the membership is increased to 60. It is

to be noted that the finding of the civil court must be treated as that the exact number of members is yet to be ascertained. It must be treated as the finding of the civil court that the earlier finding of the Munsiff that there were 60 members does not hold good. I do not think that it is open to the petitioner to say that it is not a valid exercise of power by the authorities when they say that there is no evidence to show that there was increased membership. Of course I cannot subscribe to the view taken by the authorities that there is no amendment to the bye-law by which the membership was shown as increased and, therefore, the petitioner is to be non-suited. It is to be noted that even going by the bye-law produced by the party respondents, there is no limit fixed by the bye-law as regards the number of members who can be admitted. Bye-law only provides that who can be admitted as member. A person can be admitted as member apparently on the basis of the decision of the appropriate body. Apparently the case of the petitioner is built around that there are 60 members. The finding of the authority is also that there is

no evidence to show that there are 60 members. If that is so, I would think that it may not be correct or legal to contend that the educational authorities are without power to determine for the purpose of the act and the rules whether the petitioner can claim to be the validly appointed Manager which he can claim only after he is elected as the Secretary. When a dispute is raised before the educational authority regarding the validity of the election and if it is a dispute which can be settled at least for the limited purpose under the Act and the Rules, I would think that it may not be open to say that it is such a complicated question which can be decided only in a civil suit. The short point going to the root of the election is the extent of the electorate. That is a matter of documentary evidence. Apparently petitioner has failed to produce and satisfy the authorities that the very basis of the election, which he claimed for his right as Manager was existent.

In such circumstances I feel that there is no need to interfere with the concurrent findings of the educational

authorities. The writ petition is dismissed. However I make it clear that the observations made in this writ petition will not in any way prejudice the prosecution of the contentions of the parties in the civil suit, which is pending, namely, O.S. 78 of 2002.

K. M. JOSEPH, JUDGE

kbk.